

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
AFFINITY NETWORK INCORPORATED,)
dba, ANI NETWORKS)
For a Certificate of Authority to)
Provide Facilities-Based and Resold)
Intrastate Telecommunications)
Services.)

DOCKET NO. 2006-0411

DECISION AND ORDER NO. 23643

Filed Sept. 10, 2007

At 2 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
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STATE OF HAWAII

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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_____)

Docket No. 2006-0411
Decision and Order No. **23643**

DECISION AND ORDER

By this Decision and Order, the commission grants the request of AFFINITY NETWORK INCORPORATED, dba ANI NETWORKS ("Applicant") to expand its existing certificate of authority ("COA") to provide facilities-based intrastate telecommunications services within the State of Hawaii ("State"), subject to certain regulatory conditions. Under its expanded COA, Applicant is authorized to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State.

I.

Background

Applicant is a California corporation with its principal place of business in Las Vegas, Nevada. It is authorized to transact business in the State as a foreign corporation.

In 2000, the commission granted Applicant a COA to operate as a reseller of telecommunications services within the State.¹

A.

Applicant's Request

On October 13, 2006, Applicant filed an application seeking a COA to provide facilities-based and resold intrastate telecommunications services in the State ("Application").² The Application was filed pursuant to HAR §§ 6-80-17 and 6-80-18.

On July 19, 2007, upon realizing that it already had authority to provide telecommunications services on a resold basis, Applicant filed a letter seeking to modify its Application to request expansion of its authority to provide facilities-based services in the State.³

Through its expanded authority, Applicant plans to offer long distance and wholesale service to other carriers and enterprise customers in the State. Specifically, Applicant intends to utilize SONUS switches connected to access tandems in its provision of services. Applicant represents that it is:

¹See In re Affinity Network Incorporated, Docket No. 99-0142, Decision and Order No. 17495, filed on January 25, 2000 ("Decision and Order No. 17495").

²Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex-officio party to all proceedings before the commission. See Hawaii Revised Statutes ("HRS") § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

³Copies of Applicant's July 19, 2007 letter were served on the Consumer Advocate.

(1) fit, willing, and able to meet its obligations as a certified telecommunications carrier for facilities-based services in the State; and (2) managed by personnel with vast amounts of experience in the telecommunications field. Applicant also asserts that granting it authority to provide facilities-based services would further the public interest since its entrance into this segment of the State's telecommunications market will offer customers in Hawaii an additional choice in facilities-based service providers. In particular, Applicant contends that its entrance in the facilities-based market "will enhance competition within the State and require other carriers to move into other markets and provide their services more efficiently, thus ensuring universal ability and accessibility of telecommunications services within the State[.]"⁴ Additionally, it states that consumers of telecommunications services and other carriers offering services in the State will benefit through "downward pressure on prices, increased choice, improved quality of services and customer responsiveness, innovative service offerings and access to increasingly advanced telecommunications technology."⁵

B.

Consumer Advocate's Statement of Position

On November 16, 2006, the Consumer Advocate filed its Statement of Position ("CA's Statement of Position") informing

⁴See Application at 4.

⁵Id at 5.

the commission that it does not object to Applicant's request provided that Applicant: (1) modify its tariff in accordance with the Consumer Advocate's recommendations set forth in Section II.E of its Statement of Position; (2) provide a copy of its Certificate of Authority approved by the Director of Commerce and Consumer Affairs of the State authorizing it to conduct business in the State as a foreign corporation ("DCCA Certificate"); and (3) submit a copy of its most recent financial statements as required under HAR § 6-80-17(c)(1)(E) ("Financial Statements").⁶

The Consumer Advocate also recommended that the commission, on its own motion, grant the following waivers to be

⁶By letter dated January 22, 2007, the commission requested that Applicant: (1) file its updated Financial Statements with the commission within sixty days of the date of the letter and informed Applicant that if it desired to designate the statements as confidential, it needed to file them in accordance to and under a commission approved protective order; and (2) clarify that it had not previously obtained a COA under Docket No. 99-0142. On April 10, 2007, the commission issued its Notice of Dismissal of Application based on Applicant's failure to respond to the commission's January 22, 2007 letter. In response, Applicant filed a letter on April 18, 2007, informing the commission that Applicant: (1) was currently working on a Stipulation for Protective Order with the Consumer Advocate to file its Financial Statements under confidential seal ("Stipulation"); (2) had not previously obtained a COA from the commission to operate in Hawaii, to the best of its knowledge; and (3) would be submitting an updated DCCA Certificate in response to the Consumer Advocate's recommendations.

On May 4, 2007, Applicant submitted its Stipulation, which the commission approved by issuing Protective Order No. 23440 on May 16, 2007. Shortly thereafter, on June 15, 2007, Applicant submitted its Financial Statements under Protective Order No. 23440 and filed its DCCA Certificate.

As noted above, on July 19, 2007, upon realizing that it already had authority to provide telecommunications services on a resold basis, Applicant filed a letter seeking to modify its Application to request expansion of its authority to provide facilities-based services in the State.

consistent with waivers granted in previous decisions and orders (collectively, "Waiver Recommendations"):

1. Waive the requirement that a telecommunications carrier maintain its financial records in conformance with the uniform system of accounts, and instead allowing the carrier to maintain financial records in accordance with generally accepted accounting principles (HRS § 269-8.5);
2. Waive the requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in Hawaii, and instead allowing the carrier to promptly provide copies of its out-of-state records and books to the commission and/or Consumer Advocate upon request (HRS § 269-8.2); and
3. Waive the requirement subjecting telecommunications carriers to rate of return regulation and public and contested case hearings on proposed rate increases, except that this waiver would not apply to basic service in high cost areas provided by carriers receiving state or federal universal service fund subsidy or to non-competitive services (HRS § 269-16).

The Consumer Advocate contends that granting such waivers would be consistent with HAR § 6-80-136 and, consistent with the rule, Applicant should be required to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) timely make information from its records and books pertaining to its intrastate telecommunications operations in the State available to the commission and the Consumer Advocate upon request; and (4) comply with the other requirements set forth in the rule that are not waived.

II.

Discussion

A.

COA

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a certificate of public convenience and necessity ("CPCN") from the commission.⁷ HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

At the outset, the commission finds good cause, under the circumstances, to grant Applicant's request to modify its Application to request expansion of its existing authority to provide facilities-based services in the State. Additionally, the commission takes administrative notice of the matters of Docket No. 99-0142, wherein the commission granted Applicant its COA to provide services in the State on a resold

⁷On June 3, 1996, HAR chapter 6-80 took effect. HAR 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

basis. In that proceeding, the commission found that Applicant was fit, willing, and able to properly perform services as a reseller and to conform to the commission's terms, conditions, and rules; and that Applicant's proposed services were in the public interest.⁸ Here, regarding Applicant's request to expand its COA to provide facilities-based services, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide facilities-based proposed services, as evidenced by the description of the qualifications of its management personnel and the Financial Statements submitted in support of its request.

2. Applicant is fit, willing, and able to properly perform the telecommunications services proposed and to conform to the terms, conditions, and rules prescribed or adopted by the commission, as evidenced by Applicant's representations and the documents submitted in support of its assertions. Furthermore, the commission's grant of expanded authority to provide the facilities-based services will be conditioned upon Applicant's conformity to the terms, conditions, and rules prescribed or adopted by the commission as discussed below.

3. Applicant's proposed telecommunications services are in the public interest. The commission recognizes that additional facilities-based service providers in the State's telecommunications market would increase competition and provide consumers with additional options to meet their telecommunications requirements. As the Consumer Advocate

⁸See Decision and Order No. 17495 at 2.

notes, "[t]he introduction of effective competition in the telecommunications industry is desirable to achieve the benefits that would not be present in a monopolistic environment. As such, the entry of additional service providers should further the goal of effective competition in Hawaii's telecommunications market."⁹

Based on the foregoing, the commission concludes that Applicant's COA should be expanded to provide facilities-based telecommunications services in the State.

B.

Consumer Advocate's Recommendations

With respect to the Consumer Advocate's Waiver Recommendations, the commission finds them unnecessary. As the Consumer Advocate states, its Waiver Recommendations are consistent with the provisions of HAR § 6-80-136,¹⁰ and, as such, the commission notes that the rule already waives, for Applicant, the provisions that the Consumer Advocate recommends that the commission waive in this proceeding. Specifically, HAR § 6-80-136 states the following, in relevant part:

Unless ordered otherwise by the commission, the following regulatory requirements of chapter 269, HRS, for the provision of intrastate telecommunications services by telecommunications carriers other than the incumbent carrier are waived:

HAR § 6-80-136 (emphasis added).

⁹See CA's Statement of Position at 4.

¹⁰Id. at 6.

Applicant is a telecommunications carrier offering to provide telecommunications services on a competitive basis in the State, and Applicant is a non-dominant competitive local exchange carrier and not an incumbent carrier. Waiver of the requirements articulated by the Consumer Advocate are consistent with and fully contemplated by HAR § 6-80-136. As set forth in the rule, specific authorization or waiver of these requirements is not necessary.¹¹ Moreover, the grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformance with the terms, conditions, and rules prescribed or adopted by the commission, which include all provisions of HAR § 6-80-136.

Related to its Waiver Recommendations, the Consumer Advocate also recommends that the commission require Applicant to: (1) file a separate tariff for each proposed new service; (2) maintain its financial records in accordance with generally accepted accounting principles; (3) timely make information from its records and books pertaining to its intrastate telecommunications operations in the State available to the commission and the Consumer Advocate upon request; and (4) comply with the other requirements set forth in the subject

¹¹This position is consistent with past commission decisions. See In re NECC Telecom, Inc., Docket No. 05-0248, Decision and Order No. 22461, filed on May 10, 2006. See also In re Intellicall Operator Services, Inc., Docket No. 2006-0341, Decision and Order No. 23088, filed on November 28, 2006.

rule that are not waived. The commission finds these recommendations to also be unnecessary.¹²

C.

Tariff Revisions

Upon review of the Consumer Advocate's proposed tariff revisions, the commission finds them to be reasonable and appropriate. Hence, the commission fully adopts the Consumer Advocate's tariff revision recommendations. Accordingly, the commission concludes that Applicant's proposed tariff, HI PUC Tariff No. 1, should be revised as follows:

1. Original Sheet No. 6, Application of Tariff. Applicant should include a statement clearly stating that in the event of a conflict between any of Applicant's tariff provisions (including those governing the duty to defend, indemnify, hold harmless, and limitation on liability) and State of Hawaii law, State of Hawaii law shall prevail.
2. Original Sheet No. 16, Section 2.4.3, Deposits/Pre-Payments. For consistency with HAR § 6-80-105(a), this sentence should be modified to read: "The deposit or pre-payment will not exceed an amount equal to two months' estimated charges for such service(s)."

¹²The first two recommendations are already incorporated in HAR § 6-80-136. The third recommendation appears to modify the current language of HAR § 6-80-136(3) to require Applicant to provide copies of its records and books upon the Consumer Advocate's request, in addition to the commission's request. The commission determines that because the Consumer Advocate has several discovery mechanisms available to it, an order specifically allowing the Consumer Advocate to request copies of Applicant's records and books in conjunction with the waiver provisions of HAR § 6-80-136 is not warranted at this time. With respect to the Consumer Advocate's fourth recommendation, because this requirement would exist regardless of a commission order containing such an instruction, the commission determines that a commission order on this issue is unnecessary.

3. Original Sheet No. 17, Section 2.4.6, Deposits/Pre-Payments. For consistency with HAR § 6-80-105(b), the simple interest rate to be paid on customer deposits should be modified to six percent (6%) instead of the one percent (1%) proposed by Applicant.
4. Original Sheet No. 17, Section 2.4.7, Deposits/Pre-Payments. For consistency with HAR 6-80-105(a), the second sentence of the provision should be modified to read: "The sum of any deposit and any pre-payment shall not exceed an amount equal to two months' estimated charges for such service(s)."
5. Original Sheet No. 19, Section 2.6.3, Provision and Maintenance of Service. To ensure that customers receive a reasonable amount of time for notification of any Service-affecting activities to be preformed by Applicant, the third sentence of the provision should be modified to read: "When possible, Company will provide the Customer with reasonable notice of at least 24 hours of Service-affecting activities that may occur in the normal operation of Company business."
6. Original Sheet No. 21, Section 2.8.3, Customer Responsibilities. To ensure that customers receive a reasonable amount of time to make arrangements to provide access and right-of-way for the Company, this provision should be modified to read: "The Customer must make arrangements . . . at any reasonable hour upon at least 24 hours notice, when possible, by the Company for the purpose of performing Company's obligations under this Tariff."
7. Original Sheet No. 23, Section 2.9.4, Payments and Billing. For clarification purposes and to avoid any confusion, the provision should be modified by specifically setting forth the returned check fee to be assessed to the Customer.
8. Original Sheet No. 24, Section 2.9.6.A, Payments and Billing. For consistency with HAR § 6-80-107(1), Applicant should publish in its tariff and its bills its toll-free telephone number that can be used by customers 24 hours a day, 7 days a week, for complaints. The following language is suggested:

All Customer complaints are subject to
Hawaii Administrative Rules § 6-80-107.
Customer inquires or complaints regarding

service or accounting may be made in writing or by telephone to the Company at:

Affinity Network Incorporated
4380 Boulder Highway
Las Vegas, NV 89121
(Applicant's toll-free number provided here.)

9. Original Sheet No. 24, Section 2.9.6.C, Payments and Billing. Applicant should amend this section to inform its customers that all billing disputes are subject to HAR § 6-80-102 and, in accordance with HAR § 6-80-107(4), Applicant should insert the commission's address and telephone number for customer complaints. The following language is suggested for this section:

All billing disputes are subject to Hawaii Administrative Rules § 6-80-102. All Customer complaints and inquiries regarding service or billing are subject to the jurisdiction of the Commission, which may be contacted at the following address and telephone number:

Hawaii Public Utilities Commission
465 South King Street, Room 103
Honolulu, HI 96813
(808) 586-2020

III.

Orders

THE COMMISSION ORDERS:

1. Applicant's request to modify its Application to request an expansion of its existing COA to provide facilities-based services in the State is approved.

2. Applicant's request to expand its COA to provide facilities-based intrastate telecommunications services in the State is granted. Thus, under its expanded COA, Applicant is now authorized to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State.

3. As a holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269; HAR chapters 6-80 and 6-81; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

4. Applicant shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant's tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.

5. Applicant shall conform its tariff to all applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions referred to or set forth in Section II.C of this Decision and Order. An original and eight copies of Applicant's revised tariff shall be filed with the commission, and two additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariff.

6. Under its expanded COA, Applicant shall continue to pay a telecommunications relay service ("TRS") contribution established pursuant to: (A) HRS § 269-16.6; and (B) Decision and Order No. 23481, filed on June 7, 2007, in Docket No. 2007-0113.

7. If Applicant will own, operate, or maintain any subsurface installation as defined by HRS § 269E-2, it shall register as an operator and pay to the commission a one-time registration fee of \$350 for the administration and

operation of the Hawaii One Call Center,¹³ pursuant to Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195.

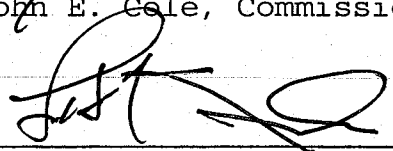
8. Failure to comply with the requirements set forth in paragraphs 3 to 7, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii SEP 10 2007.

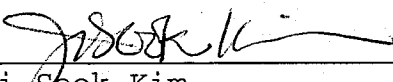
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2006-0411.eh

¹³The Hawaii One Call Center may be contacted by telephone at (877) 668-4001.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23643 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: **SEP 10 2007**